



November 6, 2017

US Department of the Interior
Bureau of Land Management
Mail Stop 2134 LM
1849 C St., NW
Washington, DC 20240

Re: Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements, Docket ID No. BLM-2017-0002-0001

To Whom It May Concern:

Western Energy Alliance and the Independent Petroleum Association of America (IPAA) appreciate the opportunity to provide comment on the Bureau of Land Management's (BLM) proposed stay of effectiveness of certain provisions of the Methane and Waste Prevention rule, or 2016 rule. We believe that the original rule as promulgated exceeded BLM's authority under the Mineral Leasing Act (MLA) and that the decision to postpone compliance dates while BLM re-evaluates the rule is prudent. Given the lengthy rulemaking process that will be needed to revise the final rule, we believe BLM should stay compliance dates for two years, rather than the proposed one year. Notably, the 2016 rule took more than two years to develop and finalize.

The Independent Petroleum Association of America represents the thousands of independent oil and natural gas exploration and production companies, as well as the service and supply industries that support their efforts. Independent producers drill about 95 percent of American oil and natural gas wells, produce about 54 percent of American oil, and more than 85 percent of American natural gas.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees.

The 2016 Waste Prevention Rule is in Excess of BLM's Statutory Authority

The decision to review the 2016 rule is necessary because the current rule exceeds BLM's statutory authority. A federal judge in the District Court of Wyoming has expressed significant concern with the rule. The court described BLM as having "hijacked the EPA's authority under the guise of waste management" and stated that "the BLM cannot use overlap to justify overreach."¹ Given such a strong

¹ [State of Wyoming v. Interior](#). 2:16-CV-0285-SWS, 2017.

signal of the legal vulnerability of the rule, it's logical that BLM would move quickly to revise it to more accurately reflect the agency's statutory authority.

As we observed during the rulemaking, one of the primary goals of the 2016 rule is to reduce the amount of methane emissions from oil and gas operations. In fact, the way the rule was promoted, it was the primary goal of the 2016 rule. During the rulemaking, BLM repeatedly emphasized the methane reductions the proposed rule would achieve as a justification for its provisions. However, BLM lacks authority to require the oil and gas industry to reduce such emissions, except as those reductions may occur as an incident of an otherwise lawful measure to prevent the "waste" of gas adopted pursuant to BLM's authority under the Mineral Leasing Act ("MLA").

For purposes of the MLA, it is well established that gas is "wasted" only if it could have been economically captured and marketed or put to beneficial use on the lease, but is not. Thus, to establish that a proposed waste prevention measure is a "reasonable precaution" against "waste," and authorized under the MLA, BLM must demonstrate that the gas that is subject to the measure can be economically captured by the operator. If the gas cannot be economically captured, then it is not being "wasted," and BLM has no authority to otherwise regulate what is being done with it, no matter how much methane it may contain.

Even taking BLM's original cost-benefit analysis of the 2016 rule at face value, it is clear that BLM cannot make the required demonstration with respect to several of its proposed waste prevention measures. For example, BLM estimated that its requirement to replace certain pneumatic pumps with zero-emission pumps would impose costs of \$2.7 million per year, but would result in only \$2.2 million in savings. Thus, the requirement has a negative cost-benefit ratio, or, in other words, BLM cannot demonstrate that the gas that is currently be vented from the pumps subject to the Proposed Rule can be economically captured by replacing the pumps with zero-emission pumps. Even assuming the validity of BLM's analysis, the only way BLM can justify the measure on a cost-benefit basis is by adding in the \$18 million in "monetized benefits" that it believes can be achieved in terms of climate change by the reduction in methane emissions that would occur if zero-emission pumps were used.

However, BLM lacks authority under the MLA to justify its waste prevention measures by adding in climate change benefits that might be realized by society generally from the incidental reduction in methane emissions that would occur if the measures are implemented. Neither the MLA, nor any of the other statutes that BLM cites in the Proposed Rule's preamble, gives BLM the authority to regulate the emission of gas from oil and gas operations out of a concern about the effect those emissions may have on climate change. That authority, to the extent it exists, has been given by Congress exclusively to EPA under the Clean Air Act. By relying on the benefits of methane reduction to justify its waste prevention measures, BLM is clearly relying on factors which Congress did not intend it to consider when developing such measures under the MLA.

To demonstrate that a particular measure is a reasonable precaution against waste, BLM must demonstrate that the gas subject to the measure can be economically captured by the operator. Whatever benefits calculated using the social cost of methane might be realized as a result of the measure have no place in that demonstration. The benefits that may flow to society generally are irrelevant to the question of whether the gas can be economically captured by the operator. Put simply, because those benefits do not flow to the operator, they are not benefits that can be spent to capture the gas. Thus, while an otherwise "reasonable" measure to prevent the "waste" of gas may have the incidental effect of

reducing the amount of methane that is emitted from oil and gas operations, such a measure may not be made “reasonable” for purposes of the MLA by virtue of that incidental effect.

Federal oil and gas lessees have a right to develop the oil and gas resources on their leases, subject to the requirement that they take “reasonable precautions” to prevent the “waste” of those resources, and that they comply with other applicable federal laws and regulations, like the ones adopted by EPA to regulate air emissions. If they are not “wasting” those resources—i.e., if those resources cannot be economically captured—BLM is not free to impose so-called waste prevention measures on them pursuant to its MLA authority just because society as a whole may benefit from the incidental methane reductions that would occur if the measures were implemented. The oil and natural gas industry has and will continue to work voluntarily to address methane emissions, but federal oil and gas lessees may not be made to bear the costs of reducing those emissions under the guise of BLM’s authority to impose “reasonable precautions” to prevent the “waste” of gas.

Given the clear overreach by BLM in the current rule, the decision to re-evaluate the rule is entirely appropriate. What BLM should have done in its original rulemaking, and appears willing to do based on this proposed rule, is focus on a tailored update to Notice to Lessees 4-A (NTL-4A), and address the delays with pipeline infrastructure right-of-way permit approvals. We’re optimistic that BLM will take the opportunity during the coming reconsideration process to promulgate a rule that remains within the agency’s statutory authority and is based on a sound cost-benefit analysis.

BLM’s 2016 Rule Will Cause Significant Economic Harm if it Becomes Effective

Our analysis of the proposed rule demonstrated costs of \$1.26 billion annually to the economy, and that those costs far outweigh even the highest end BLM benefit estimate of \$384 million.² Last year, natural gas prices dropped as low as \$1.57 per million BTU and \$1.40 Mcf according to the EIA and media sources. Discounting the idea that a reduction in potential methane emissions would have any benefit on the environment that could be monetized, a more reasonable calculation of the potential benefit of the 2016 would be \$90 million. With a cost of \$1.26 billion and a potential benefit of just \$90 million, the 2016 rule does not produce a net social or economic benefit. Additionally, those economic losses create an additional loss of \$114,112,000 in federal and state taxes. The benefits as laid out by BLM are also speculative at best as they rely on passage of EPA Subpart OOOOa and on certain flawed assumptions that methane gas reductions have a social cost benefit.

Even accepting BLM’s estimated costs of the rule, it is not economical. BLM can only claim that the rule’s benefits outweigh its costs by including the social cost of methane. The social cost of methane analysis, however, cannot be used to justify a domestic rule because it accounts for global benefits. More significant, this methodology has been rejected as federal policy, as explained below.

Given the clear and substantial economic harm facing industry and mineral owners, including the federal mineral estate, it is logical that the rule’s effectiveness be delayed while reconsideration is underway. Many rule provisions like the requirement to retrofit pneumatic controllers at existing facilities require significant capital expenditures, as many companies will have to replace hundreds or even thousands of devices. If the 2016 rule’s provisions go into effect but are later changed, industry will have no way to

² [Waste Prevention, Production Subject to Royalties, and Resources Conservation, proposed rule comments](#). Western Energy Alliance et al. April 22, 2016.

recover these one-time capital expenditures. It's therefore critical to provide a consistent regulatory environment and put the rule's requirements on hold until they can be re-evaluated.

Should BLM choose not to delay provisions of the 2016 rule, many production facilities may be shut-in or abandoned if they are unable to absorb the added compliance cost. Our economic analysis of the proposed rule calculated up to 112.4 million barrels of otherwise developable production could be lost, which contravenes the intent of Executive Order 13783 *Promoting Energy Independence and Economic Growth*.

We've since updated our economic analysis of the compliance burden with the 2016 rule, particularly focusing on the January 2018 implementation dates that BLM is contemplating postponement. In our evaluation, we calculated costs incurred by operators from the end of October until January 17, 2018 to determine the near-term costs to come into compliance with the 2016 rule. Our analysis is based on member company estimates, which collectively represent 38.8% of facilities and equipment impacted by the rule. Extrapolating company estimates for the entire industry, we project the cost of compliance exceeds \$115 million to comply with just sections 3179.201 (pneumatic controllers), 3179.202 (pneumatic pumps), 3179.203 (storage tanks), and 3179.301 (leak detection and repair) of the 2016 rule.

The table below outlines cost estimates for the proposed rule and our revised cost estimates. Notably, this is only for the initial compliance period and does not include the cost of ongoing LDAR inspections, nor does it include repair costs associated with any leaks detected. LDAR requirements will continue to impose costs for the duration of the well's effective life.

Table 1. Estimated Costs Associated with the Rule

Impacted Component	Cost per Well	Number of Wells		Total Cost	Revised Cost	Revised Total	Pct Diff
		Impacted			Per Well	Cost	
Flaring (total including limits and metering)	\$73,583	1,111		\$81,750,713			
Well Completion	\$7,619	1,575		\$11,999,925			
Pneumatic Controllers	\$384	15,600		\$5,990,400	\$579	\$9,032,593	50.8%
Pneumatic Pumps	\$308	8,775		\$2,699,980	\$2,328	\$20,426,796	656.6%
Liquids Unloading	\$3,871	1,550		\$6,000,050			
Storage Tanks	\$20,625	3,200		\$66,000,000	\$17,907	\$57,303,458	-13.2%
LDAR	\$3,736	38,000		\$141,968,000	\$744	\$28,280,428	-80.1%
Administrative Burden	\$67	38,000		\$2,558,920			
Total	\$110,193			\$318,967,988	\$21,558	\$115,043,274	-63.9%

BLM Should Allow Sufficient Time for Revision Rulemaking

Industry is already in a difficult position of preparing to comply with rule provisions that may or may not be suspended in a few months. Companies require several months lead time needed to order and install equipment, train inspectors and conduct fugitive emission inspections, establish the accounting and reporting systems necessary for compliance, and complete the many other tasks needed to comply with the rule. We're concerned that a one-year delay will put BLM and industry into a similarly difficult situation in a matter of months.

Given that the notice and comment rulemaking process is time-consuming and any effort to short circuit it leaves BLM legally vulnerable, we believe one year may not be enough time to propose a new rule, respond to comments, and issue a final rule. In response to BLM's request for comment on the possibility

of a two year delay, we support delaying compliance dates for a minimum of two years to ensure a smooth transition to the revised rule and avoid creating further regulatory uncertainty for industry. The 2016 rule took over two years to develop, propose, and finalize, which further supports the conclusion that one year will not be enough time for BLM to accomplish its objectives. EPA is also exploring similar action with the New Source Performance Standards Subpart OOOOa rule, proposing to delay compliance dates for two years while it issues a new rule.

In Accordance with E.O. 13783, BLM Should Not Use the Social Cost of Methane

The proposed rule makes several references to “interim values” for the social cost of methane, yet it is unclear why BLM is continuing to utilize the metric. E.O. 13783 clearly states that the social cost of carbon and social cost of methane should not be used for rulemaking purposes, yet BLM’s proposal still makes an attempt to monetize the social benefits of emissions reductions. As BLM notes in the Regulatory Impact Analysis, “The SC-CH4 estimates presented here are interim values for use in regulatory analyses until an improved estimate of the impacts of climate change to the U.S. can be developed.” Even if such calculations were appropriate in a waste management rule (which, as explained above, they are not) the metric has been deemed flawed. BLM should not attempt to use another potentially flawed interim calculation. Instead, a more logical approach would be to wait until the metric is updated before using it in rulemaking.

Conclusion

In closing, we reiterate the tremendous progress that America’s oil and natural gas industry has made, and will continue to make, in addressing issues associated with venting, flaring, and methane emissions. According to EPA’s greenhouse gas inventory,³ between 1990 and 2015, methane emissions from petroleum and natural gas systems have declined 19% while natural gas production has increased 49%.⁴ In the 2015 inventory (published in 2017), petroleum system emissions continued their successful long-term trends, declining 28.9% since 1990. From 2014 and 2015 alone, petroleum system emissions dropped 7.5%, “...primarily due to decreases in emissions from associated gas venting and flaring.”

We support BLM’s plan to delay compliance dates while it re-evaluates the 2016 rule that clearly exceeded the agency’s authority. We believe the reconsideration process will take longer than one year, and we respectfully request BLM to consider a two-year delay of compliance dates to accommodate the rulemaking process. Should BLM fail to delay compliance dates, industry, royalty owners, and the U.S. economy will suffer immediate and significant harm.

Sincerely,



Daniel T. Naatz
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Kathleen Sgamma
President
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³ [Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2015](#), EPA, April 14, 2017.

⁴ [U.S. Dry Natural Gas Production](#), Energy Information Administration, Accessed June 27, 2017.